IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1104 of 1988

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

UNION OF INDIA

Versus

CHHOTUBHAI G DESAI

Appearance:

1. Special Civil Application No. 1104 of 1988

MR RM VIN for Petitioner No. 1-3

RULE UNSERVED for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 08/09/2004

ORAL JUDGEMENT

Heard learned advocate Mr.R.M.Vin on behalf of the petitioner. Though, Notice of Rule issued by this Court, has remained unserved because of the reason that

the respondent is not residing at the given address.

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#. However, considering the fact that the present petition is very old of the year 1988, this Court is inclined to proceed with the matter even in absence of the respondent.

#. In the present petition, the petitioner has challenged the order of the Labour Court, Surat made in Special Recovery Application No.3 / 1984 dated 19th September, 1986, whereby the labour court, Surat has allowed the application and directed the petitioner to pay Rs.13,500/- within a period of one month from the date of receipt of copy of the order. At the time of issuing Rule on 7th March, 1988, Division Bench of this Court has passed the following order;

"Rule. Ad-interim stay against implementation of the award of the Central Labour Court, Surat on condition that the amount of Rs.13,500/- is deposited in the Central Labour Court, Surat within eight weeks from today. On such deposit, the Central Labour Court will invest the amount in a long term deposit with any scheduled bank and pay interest thereon to the respondent."

Thus, pursuant to the order passed by this Court, the petitioner was required to deposit an amount of Rs.13,500/- before the labour court as per the direction of this Court and on deposit of the said amount, the same is directed to be invested in long term deposits with schedule bank and interest thereon requires to be paid to the respondent.

#. Learned advocate Mr.Vin has submitted that the labour court has committed gross error in allowing the application of the respondent. He submitted that this benefit was not available to the Ministerial Staff. He also submitted that his retirement age was 55 years and not 60 years. Railway Board letter dated 6th December, 1962 is not applicable to the respondent as he did not fall under the category of Ministerial Staff. He was working as the Parcel Clerk and therefore, benefit under Rule 2046 was not available to him. Therefore, he submitted that this aspect has been totally ignored by the labour court and hence, the order in question requires to be quashed and set aside.

#. It is pertinent to note that no one appears on behalf of the respondent. However, in the interest of justice,

this Court has considered the order in question. This Court has perused the order passed by the Labour Court, Surat. As emerged from the record in para-6 of the award in question, before the labour court, the very question and issue was examined by the labour court, Surat earlier and a copy of the judgment was also produced by the respondent before the labour court at Exh.12 dated 7th March, 1984. According to the labour court, the facts of the present case was similar and identical and that question was already examined by the labour court, Surat by the same Labour Judge. Therefore, the question whether the respondent was entitled to remain in service upto 60 years or 55 years, was already examined by the labour court in earlier order dated 7th March, 1984 vide Exh.12. and therefore, that question was not required to be examined by the labour court. Therefore, the labour court examined only the question whether the respondent workman fall under the category of Ministerial Staff or not. Ministerial Staff of Railway Administration is not classified in a particular fashion and therefore, considering the nature of work of the respondent, mainly Clerical in nature, the labour court has come to the conclusion that respondent was working as Ministerial Staff and on that basis, the labour court has passed the order in favour of the respondent. Railway authority has not produced any contrary evidence before the labour court that respondent was not falling within Ministerial Staff. Therefore, considering this fact, the labour court has come to the conclusion that the respondent entitled to serve upto 60 years. This being finding of fact appreciated by the labour court on the basis of the record, this Court while exercising the powers under Article 227 of the Constitution of India, cannot reappreciate the finding of fact and furthermore, the limited jurisdiction vested with this Court under Article 227 of the Constitution of India, when there is no error found apparently on record committed by the labour court, and the fact that Mr.Vin has failed to point out any infirmity in the order,this Court cannot interfere with the order passed by the labour court while exercising the powers.

#. It is also important to note that when this Court has passed the order in 1986,the respondent workman was aged about 90 years and after about 18 years, probably there is doubt whether the respondent is alive or not. This being also consideration not to disturb the order passed by the labour court. In view of facts and circumstances of the case, there is no substance in the present petition, present petition is disposed of accordingly.

Rule is discharged. Interim relief, stands,

vacated. The labour court concerned is directed to pay the amount of Rs.13,500/- deposited by the petitioner, with interest accrued thereon if not withdrawn by the respondent, to the respondent and even to the legal heirs of the respondent in case of death of the respondent without any delay.

No order as to costs.

Date : 8.9.2004 [H.K.Rathod, J.]

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